PUBLIC PROSECUTOR v. SHARIKAT PERUSAHAN MAKANAN HAIWAN BERKERJASAMA2

[A.Cr.J. (Sharma J.) July 25, 1969]

[Malacca — Criminal Appeal No. 60 of 1968]

Food Control — Rice mill — Operating without licence — Charge made — Total misdirection by magistrate — Amended charge — Opportunity to be heard on amended charge — Case sent back to magistrate to decide on the merits — Control of Supplies Act, 1961, s. 22(1) & (2) — Food Control (Rice Milling) Regulations, 1950, reg. 5.

Interpretation — "And" and "or" — "Purpose" — Meaning of.

The respondents were charged under regulation 5 of the Food Control (Rice Milling) Regulations 1950 as follows:— "That you on the 6th day of February, 1968 at premises No. C4497, Batu 3½ Malim Road, Melaka in the State of Melaka did, without a licence from the State Secretary Melaka, operate a mill driven by an engine for the purpose of milling padi into rice and that you have thereby committed an offence under regulation 5 of the Food Control (Rice Milling) Regulations, 1950 punishable under section 22(i) of the Control of Supplies Act No. 14 of 1961."

The learned magistrate after calling for the defence acquitted and discharged the respondents on three grounds namely (a) the rules and bye-laws of the respondents provided for the production of animal food from padi (b) that the honorary secretary of the respondents appeared to be a truthful witness and (c) the defence had cast a reasonable doubt as to the strength of the prosecution case. On appeal,

Held, allowing the appeal: (1) the learned magistrate had totally misdirected himself. The matter before the magistrate was a simple question of law namely whether on the facts there was a breach of regulation 5. of the Food Control (Rice Milling) Regulations 1950;

(2) the charge should have been under section 22(2) and not under section 22(1) of the Control of Supplies Act, 1961. The charge should be amended accordingly and the case sent back to the learned magistrate to decide the case on its merits after affording the respondents an opportunity to be heard.

Cases referred to:—

(1) *R.* v. *Oakes* [1959] 2 All E.R. 92.

(2) *Newton* v. *Commissioner of Taxation* [1958] A.C. 450.

(3) *Chandler* v. *Director of Public Prosecutions* [1964] A.C. 763.

CRIMINAL APPEAL.

Abdullah bin Ngah for the appellant.

S. Ponniah for the respondents.

Cur. Adv. Vult.

Sharma J.: The respondents are a co-operative society engaged in the manufacture of animal food. The respondents do not sell rice but do make use of padi in the process of the manufacture of animal food. This process, however, involves the milling of padi into rice. On 6th February 1968, the supplies officer Malacca went to the mill operated by the respondents and there found the machines working and padi being milled into rice. The factory consisted of four machines but at the time of the visit of the supplies officer only one of such machines was working. The respondents did not have a licence to mill padi into rice and were charged under section 22(1) of the Control of Supplies Act 1961. The charge reads as follows:—

"That you on the 6th day of February 1968 at premises No. C4497, Batu 3½ Malim Road, Melaka in the State of Melaka did, without a licence from the State Secretary Melaka, operate a mill driven by an engine for the purpose of milling padi into rice and that you have thereby committed an offence under regulation 5 of the Food Control (Rice Milling) Regulations 1950 punishable under section 22(1) of the Control of Supplies Act No. 14 of 1961."

The learned magistrate called for the defence of the respondents but found them not guilty and acquitted and discharged them. He did so on three grounds. First there were the rules and bye-laws of the Co-operative Society which authorised or provided for the production of animal food from padi. Secondly the learned magistrate was impressed with the truthfulness of the honorary secretary of the respondents who appeared as a witness for the defence. Thirdly the learned magistrate thought that the evidence produced by the defence (and there was only the honorary Secretary of the Co-operative Society who gave any evidence on behalf of the respondents) had cast a reasonable doubt in his mind as to the strength of the prosecution case.

The Control of Supplies Act 1961 (hereinafter referred to as the Act) was enacted to provide for the control and rationing of supplies. The definition of "supplies" in the Act "includes every kind and type of article, food, commodity or thing whatsoever." The Act repealed the Food Control Ordinance 1939 of the Straits Settlements and also the B.M.A. Food Control Proclamation. Section 30(2)(a) of the Act reads as follows:—

"Notwithstanding the repeal of the Food Control Proclamation the following provisions shall have effect:—

(a) any rule, regulation or order made under the said Proclamation and in force immediately before the commencement of this Act shall, so far as it is not inconsistent with this Act, be deemed to have been made under the corresponding provisions of this Act and shall continue in force until it has been revoked, amended or replaced by orders or regulations made under this Act;"

Regulation 5 of the Food Control (Rice Milling) Regulations 1950 made under the B.M.A. Food Control Proclamation prohibits the working or operation of any mill *for the purpose of* milling padi into rice except under and in accordance with the terms and conditions of a licence

issued for that purpose. This regulation reads as follows:—

"5. No person shall work or operate any mill driven or capable of being driven by a machine or an engine for the purpose of milling padi into rice or for polishing rice save under and in accordance with the terms and conditions of a licence issued in that behalf."

It was argued that regulation 5 of the Food Control (Rice Milling) Regulations is *ultra vires* the Act, that a regulation under the B.M.A. Food Control Proclamation, in order to have any force at all, must be consistent with the Act. Now section 6(1) of the Act gives Powers to the Minister to make regulations to carry into effect the provisions of the Act and section 6(2)(j) authorises him to regulate and control "the milling of padi and the polishing of rice and the sale thereof." I was asked to construe section 6(2)(j) of the Act as authorising the making of such regulations which are in respect only of that paddy which was sent to the mill and which paddy so identified and particularised was milled and polished into rice and that rice so polished and produced from that particular paddy was sold. In other words the regulations were to be restricted to the process of paddy being fed into the mill and that paddy ultimately being sold after having been polished. The use of the word 'and' in section 6(2)(j) between the words "milling of padi" and "the polishing of rice" and again its repetition between the words "polishing of rice" and "the sale thereof" may indicate that the word "and" is to be read conjunctively. If the paddy is only milled into rice but this rice is not polished and/or is not sold, any regulations made by the Minister regulating or controlling only one of the three processes is, according to this argument, a regulation not consistent with the Act. In other words the regulation and control must relate to that whole and unbroken process of milling, polishing and sale. The argument is subtle but unsound. It ignores the provisions of section 6(1) and the opening words of section 6(2) of the Act. Further the Legislature has by its own will enacted that all the rules, regulations and orders made under the Food Control Proclamation and which were in force at the commencement of the Act were to be deemed to have been made under the Act. They are made part of the Act and receive their sanction from the Parliament itself and not by anything done by the Minister. I do not find anything in regulation 5 of the Food Control (Rice Milling) Regulations 1950 which is inconsistent with the provisions of the Act. Licencing is one of the ways whereby the Minister is able to regulate and control the milling of padi, the polishing of rice or its sale. It is occasionally necessary to read the conjunction 'and' as if it were 'or' so that the meaning and the intent of the Legislature can be carried out. One should, however, be reluctant to convert 'and' into 'or' or *vice versa* in a penal statute if the result of it is going to be unfavourable to the subject. but there is no rule of law to that effect (*R. v. Oakes*).[1]

Regulation 5 uses the words, "for the purpose of milling paddy into rice or for polishing rice." What the respondents say is that they operated the mill not for the purpose of milling paddy into rice but for the sole purpose of producing animal food, that milling of paddy into rice is only one of the stages in the production of animal food and that the "purpose" contemplated in regulation 5 connotes an animus, and that in the absence of that animus there is no offence committed or contemplated in law. In *Newton v. Commissioner of Taxation*[2] Lord Denning says:—

"The word 'purpose' means, not motive but the effect which it is sought to achieve — the end in view, The word 'effect' means the end accomplished or achieved."

The case of *Chandler v. Director of Public Prosecutions*[3] is very relevant in that the same type of argument was put forward in that case and that the meaning of the word "purpose" has been amply dealt with therein. Lord Delvin went on to say at p. 804:—

"I shall begin by considering the word 'purpose,' for both sides have relied on this word in different senses. Broadly, the appellants contend that it is to be given a subjective meaning and the Crown an objective one.

I have no doubt that it is subjective. A purpose must exist in the mind. It cannot exist anywhere else. The word can be used to designate either the main object which a man wants or hopes to achieve by the contemplated act, or it can be used to designate those objects which he knows will probably be achieved by the act, whether he wants them or not. I am satisfied that in the criminal law in general, and in this statute in particular, its ordinary sense is the latter one. In the former sense it cannot in practice be distinguished from motive which is normally irrelevent in criminal law. Its use in that sense would make this statute quite inept. As my noble and learned friend, Lord Reid, pointed out during the argument, a spy could secure an acquittal by satisfying the jury that his purpose was to make money for himself, a purpose not in itself prejudicial to the State, and that he was indifferent to all the other consequences of his acts.

Accordingly, all the results which a man appreciates will probably flow from his act are classifiable as 'purposes' within the meaning of section 1: and since the statute refers to 'any purpose,' the prosecution is entitled to rely on any of them. The next question then is whether the selected purpose is 'prejudicial' or not, and that question is, in my opinion, to be answered objectively.

This construction destroys the appellants' first submission. They argued that the immobilisation of the airfield was only incidental and that their main purpose, and the only one which they desired to achieve, was to further the campaign for nuclear disarmament. So, they said, obstruction was not their 'purpose' within the meaning of the Act. I cannot accept this. Neither

can I accept their argument (which was put in the forefront of their case at the trial, though not before this House) that their opinions and beliefs were relevant on the question whether their purpose, whatever it was, was prejudicial or not. That, as I have said, must be determined objectively and none of the appellants was qualified to give expert evidence of fact or opinion.

On the other hand, I cannot accept the argument of the Crown that the word 'purpose' when properly construed, destroys the whole of the appellants' case. The Crown contends, in effect, that once the immediate purpose has been selected for proof, the only consequences that can be examined in order to see whether it is prejudicial or not are the immediate consequences. A variant of this argument is that the purpose must be confined to acts intended to be done on the prohibited place itself.

My Lords, this, in my opinion, gives the statute too narrow a meaning and would render criminal acts which could not have been intended to be brought within its scope. The example that the appellants used to demonstrate this was that of a man who in an emergency (and presumably without authority, though I do not know that that matters for the defence of lawful authority is not made available by this part of the Act) holds up an aeroplane because he believes that a time bomb has been planted in it. It can be said that the removal of the time bomb is a purpose to be fulfilled on the airfield itself. But it is easy to think of other examples (such as police obstructing the air traffic by crossing the runways as a short cut when in pursuit of a criminal) in which that feature is absent. Against this it is said by the Crown that in such cases the purpose is not to interfere with the operation of the airfield but to remove the time bomb or capture the criminal, as the case may be. This, I think, is to employ the argument which when it came from the appellants the Crown rightly condemned as erroneous. It is to assimilate purpose and motive. If it is permissible for a man who has interfered with the running of the airfield to say that all he was doing was trying to capture a criminal, it must also be permissible for him to say that all he was doing was trying to save the State from impending harm.

In my judgment the correct method of ascertaining whether a purpose is prejudicial or not is to consider the proposed act as if it had been done. Would that act, the obstruction of the aircraft, be prejudicial to the State? To answer that inquiry all the consequences of the act that are reasonably to be apprehended must be assessed and the whole assessment is for the jury. The question should be tackled in the same way as a question of causation, excluding the fanciful and the remote but looking beyond the immediate. There may be all sorts of consequences, some immediate, some distant, some harmful, some beneficial and some colourless. There is no justification for restricting the relevant consequences either to those which occur in the mind of the actor or in the prohibited place itself; or for isolating any particular set of them on the ground that they are immediate."

Viscount Radcliffe at p. 795 said:—

"Nevertheless a distinction between motive and purpose, for instance, is familiar enough in ordinary discussion and there are branches of law in which the drawing of such a distinction is unavoidable. The Act of Parliament in this case has introduced the idea of purpose as a determining element in the identification of the offence charged and lawyers, therefore, whose function it is to attribute meanings to words and to observe relevant distinctions between different words, cannot escape from this duty merely by saying that 'purpose' is a word which has no sharply defined content. They must do the best they can to find what its content is in the context of this Act.

For my part I cannot say that I see any very great difficulty in doing so here. I do not think that the ultimate aims of the appellants in bringing about this demonstration of obstruction constituted a purpose at all within the meaning of the Act. I think that those aims constituted their motive, the reason why they wanted the demonstration, but they did not qualify the purpose for which they approached or sought to enter the airfield. Taking this view, I do not think that the distinction between immediate purposes and long-term purposes is the most satisfactory one that can be made. If the word 'purpose' is retained at all to describe both object and motive, I think that direct and indirect purposes best describe the distinction which should be placed before a jury, since those adjectives are less likely to confuse the issue. In the result, I am of opinion that if a person's direct purpose in approaching or entering is to cause obstruction or interference, and such obstruction or interference is found to be of prejudice to the defence dispositions of the State, an offence is thereby committed, and his indirect purposes or his motives in bringing about the obstruction or interference do not alter the nature or content of his offence."

In the same case Lord Pearce said:—

"The word 'purpose' although it has some subjective content is used in an objective sense. If the purpose was in fact prejudicial, the offence is committed, no matter how benevolent the motives of the spy or saboteur that led him to essay the purpose."

The test has to be an objective test. An immediate objective or purpose is as much a purpose as the ultimate objective or purpose. If the respondents had to mill paddy into rice before they could produce animal food, their immediate purpose at the time they were found milling it was to obtain rice from it and this was in contravention of regulation 5.

The object of the Food Control Proclamation was to prevent wastage of all that food which was essential for human consumption and it is the same object which the Legislature has preserved in the Act.

The learned magistrate had totally misdirected himself. It was his duty to look at the law and not the bye-laws of the Co-operative Society for the purposes of the offence which he was trying. D.W.1 may have been a truthful witness (I do not say he was not) and may have created a very good impression upon the magistrate but that again was irrelevant as he did not disprove any part of the prosecution case. The matter before the learned magistrate was a simple question of law namely whether on the facts before him there was a breach of regulation 5 of the Food Control (Rice Milling) Regulations 1950. I for one do not know what doubt the evidence of the honorary secretary of the respondents could have produced in the magistrate's mind. In giving their grounds of decision it is not enough for the magistrates to say, as the learned magistrate has said in this case, "Having considered the defence with

great care, I held that the *'court'* had raised a reasonable doubt as to the prosecution case upon a balance of probabilities." (I take it that the use of the word "court" by the learned magistrate is a mistake and what he meant to say was "defence" instead). They should state briefly what were the matters they *considered* (and this involves both law and facts), what was the *care* they exercised and what was the *doubt* created in the mind and how it was *reasonable*. The law requires them to give the *grounds* of their decision and not an empty or superficial gloss over the decision itself.

The respondents were charged under section 22(1) of the Control of Supplies Act 1961. Section 22(1) deals with the commission of an offence by any person other than a body corporate but includes a director or officer of a body corporate. Section 8 of the Co-operative Societies Ordinance 1948 renders a registered Co-operative Society a body corporate and no doubt the word "person" as defined in the Penal Code and the Interpretation and General Clauses Act 1967 includes a body corporate, yet section 22(1) of the Control of Supplies Act 1961 expressly excludes a body corporate from its scope and ambit. An offence committed by a body corporate can only fall under section 22(2) of the Control of Supplies Act 1961. The charge was not against an officer of the respondent society but against the respondents as a co-operative society and I am of the view that the charge should have been under section 22(2) and not under section 22(1) of the Control of Supplies Act 1961.

In the result the appeal is allowed and the order of the learned magistrate set aside. The charge will be amended to one under section 22(2) of the Control of Supplies Act 1961. I could have dealt with the matter here but as the respondents have a right to recall any of the prosecution witnesses the case will be sent back to the magistrate with a direction to amend the charge and to decide the case on its merits after giving an opportunity to the respondents to recall any of the prosecution witnesses, if they so desire, and to produce any evidence which they may desire to produce in support of their defence.

Appeal allowed.

Solicitors: *Stanley Ponniah, Ng & Soo.*

JAGATHESAN v. LINGGI PLANTATIONS LTD.*

[F.C. (Ong Hock Thye C.J. (Malaya), Suffian & Ali F.JJ.) July 26, 1967]

[Kuala Lumpur — Federal Court Civil Appeal No. X.102 of 1966]

Contract — Construction of written agreement — Agreement for sale of land — Payment of sum by way of deposit and part payment — Provision that in case of default the amount paid shall be forfeited to account of damages for breach of contract — Whether amount recoverable by purchaser in case of default — Proof of damages — Contracts (Malay States) Ordinance, 1950, ss. 74 & 75.

Land Laws — Agreement for sale of land — Sale not completed according to agreement — Whether deposit can be forfeited.

This was an appeal against the decision of the High Court ([1967] 1 M.L.J. 177). The appellant had agreed to purchase rubber lands for the price of $3,775,000 and had paid $377,500 under the agreement "by way of deposit and part payment." It was provided in the agreement that if there was default in completing the sale by the purchaser the amount paid by the purchaser "shall be forfeited to account for damages for breach of contract." The appellant failed to complete the contract within the time stipulated. The respondents thereupon rescinded the contract and forfeited the deposit. The appellant claimed the return of the sum of $377,500 paid by him. The learned trial judge dismissed the claim. It was contended on appeal that as the agreement provided for the forfeiture of the sum of $377,500 "to account of damages for breach of contract", the learned judge should have considered whether the sum was a genuine pre-estimate of damages; and as in this case there was no evidence that the respondents had suffered any damage the appellant should have been granted equitable relief.

Held, allowing the appeal (1) on a true construction of the agreement it was intended that the sum of $377,500 should be forfeited to account of damages, so that the vendor could have claimed more if it turned out that the sum was inadequate as compensation for their loss; and where as here the vendor had sustained little or no damage by reason of the breach of contract, the purchaser was entitled to claim a refund of any sum in excess of such damage;

(2) the sum paid in this case was not earnest money and therefore the vendor was not entitled to forfeit it on breach of the contract by the purchaser and was entitled to reasonable compensation as damages for such breach.

Cases referred to:—

(1) *Maniam* v. *State of Perak* [1957] M.L.J. 75.

(2) *Howe* v. *Smith* (1884), 27 Ch.D. 89.

(3) *Tay Say Geok* v. *Warren* [1963] M.L.J. 179, 187, affirmed by the Privy Council, [1965] 1 M.L.J. 44.

(4) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220, 222.

(5) *Wallis* v. *Smith* (1882), 21 Ch.D. 243, 258.

(6) *Mussen* v. *Van Diemen's Land Co,* [1938] 1 All E.R. 210.

(7) *Stocklower* v. *Johnson* [1954] 1 All E.R. 630.

(8) *Natesa Aiyar* v. *Appavu Padayachi* A.I.R. 1915 Mad. 896.

*Leave to appeal to the Privy Council had been granted.